

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	:	MDL No. 1871
	:	
	:	No. 07-MD-1871
	:	
This Document Relates To:	:	Hon. Cynthia M. Rufe
	:	
ALL THIRD PARTY PAYOR ACTIONS	:	
	:	

**THE SPECIAL DISCOVERY MASTER’S REPORT AND RECOMMENDATION
AS TO MODIFICATION OF THE SECOND CASE MANAGEMENT ORDER**

The Special Discovery Master submits this Report and Recommendation pursuant to Pre-trial Order No. 8 (Doc. No. 136), Pre-trial Order No. 28 (Doc. No. 222), and Pre-trial Order No. 147 (Doc. No. 1935), and recommends modification of the deadlines set forth in the Second Case Management Order (Doc. No. 5361 & Doc. No. 5390), as well as the addition of new deadlines and procedural rules to govern the remainder of fact discovery in these cases. The third party payor plaintiffs (“TPPs”) and defendant GSK have agreed to the recommended modifications and additions.

BACKGROUND

On May 14, 2021, the Court entered an Order (Doc. No. 5351), referring to the Special Discovery Master the parties’ request for entry of a Second Case Management Order (“CMO No. 2”). The parties worked with the Special Discovery Master and eventually agreed on a schedule for fact and expert discovery, as well as class

certification, *Daubert*, and summary judgment motions. The Court entered an Order adopting CMO No. 2 on July 21, 2021 (Doc. No. 5361).

CMO No. 2 did not contain actual dates for each of its deadlines. Instead, it included a period for fact discovery that closed 180 days after certain events occurred, with the remaining deadlines based on the fact-discovery closing date. The events that triggered the 180-day period eventually occurred in January 2022. In accordance with CMO No. 2, on January 28, 2022, the Special Discovery Master filed a notice that these events had occurred. The notice (Doc. No. 5390) included dates for each of the deadlines in CMO No. 2.

The parties have diligently engaged in fact discovery over the past year or so, though the progress of the discovery has been hampered to some degree by the TPPs' lack of access to the roughly 17 million pages of documents previously produced in the MDL by GSK and non-parties. The TPPs eventually obtained these documents from GSK (one of the triggering events for the fact-discovery deadline) in January 2022. The parties also have brought to the Special Discovery Master's attention a number of disputes, which is not unusual in litigation of this complexity and importance, but the parties have worked cooperatively with the Special Discovery Master to resolve each of these disputes without the need for the Court's involvement.

On May 13, 2022, the TPPs wrote to the Special Discovery Master to seek a five-month extension of all of the deadlines in the CMO No. 2 schedule. The TPPs cited "unanticipated and significant delays in the discovery process" as the basis for their request. GSK responded, opposing the extension request, and, at the Special Discovery

Master's request, the parties submitted additional information regarding the status of discovery to the Special Discovery Master. The parties then held a lengthy call with the Special Discovery Master on May 31, 2022, to discuss the TPPs' request.

Following the call, the Special Discovery Master recommended to the parties that the fact-discovery deadline be extended by three months, to October 27, 2022, and that certain interim deadlines and procedural rules be added to CMO No. 2 to ensure the efficient and expeditious progress of discovery. As the Special Discovery Master explained to the parties, the recommendation was based on the Special Discovery Master's belief, after careful review of the parties' submissions and the May 31 discussion, that a relatively short extension of the schedule was warranted and would not unduly prejudice either party. Such an extension would ensure that all necessary fact discovery, including document production, depositions, and resolution of any outstanding and future discovery disputes, could be completed without the need to make last-minute adjustments to the schedule. On June 6, 2022, the TPPs and GSK accepted the Special Discovery Master's recommendation.

RECOMMENDATION

As noted, the Special Discovery Master's core recommendation is that the fact-discovery deadline be extended by three months, from July 27, 2022, to October 27, 2022. The other CMO No. 2 deadlines would be extended similarly, so that the current and new deadlines would be as follows:

EVENT	CURRENT DEADLINE	PROPOSED DEADLINE
1. Close of fact discovery	July 27, 2022	October 27, 2022
2. Service of opening expert reports for the party with the burden of proof on an issue, including class certification	August 26, 2022	November 28, 2022*
3. Service of responsive expert reports	October 25, 2022	January 27, 2023
4. Service of expert rebuttal reports	November 28, 2022*	February 27, 2023*
5. Close of expert discovery, including expert depositions	December 28, 2022	March 29, 2023
6. TPP Plaintiffs' filing of motion for class certification	December 12, 2022	March 13, 2023
7. GSK's filing of opposition to class certification motion	February 10, 2023	May 12, 2023
8. TPP Plaintiffs' filing of reply in support of class certification motion	March 13, 2023*	June 12, 2023*
9. Hearing on class certification	To be determined by the Court.	To be determined by the Court.
10. Filing of summary judgment and <i>Daubert</i> motions	May 12, 2023	August 11, 2023
11. Filing of opposition briefs to any summary judgment or <i>Daubert</i> motions	June 12, 2023*	September 11, 2023*
12. Filing of reply briefs in support of any summary judgment or <i>Daubert</i> motions	July 3, 2023	October 2, 2023
13. Hearing(s) on summary judgment and <i>Daubert</i> motions	To be determined by the Court.	To be determined by the Court.

*Original date was a weekend or holiday; listed date is the next non-holiday weekday.

In addition to the new deadlines above, the Special Discovery Master recommends that the following interim discovery deadlines and procedural rules be added to the modified CMO No. 2:

- The deadline for service of additional document requests under Rule 34 or interrogatories under Rule 33 is May 31, 2022. Additional document requests or interrogatories may be served after this date only with approval of the Special Discovery Master, upon good cause shown.
- The deadline for service of any additional third-party document subpoenas under Rule 45 is June 24, 2022.
- The deadline for substantial completion of document productions by all parties is July 8, 2022.
- The deadline for service of privilege logs is July 29, 2022, or 21 days after the document production to which a particular privilege log pertains, whichever is later.
- The deadline for raising any disputes with the Special Discovery Master, including disputes regarding privilege issues, is September 2, 2022. Where issues arise after September 2, 2022 that could not have been anticipated and raised with the Special Discovery Master before that date, they must be submitted to the Special Discovery Master within five business days of the moving party first raising the issue with the opposing party.

- The parties will hold discovery status calls with the Special Discovery Master every two weeks, beginning the week of June 13, 2022. The frequency of these calls may be increased or decreased by the Special Discovery Master, if warranted by developments regarding discovery.
- The time period for responding to a letter brief raising an issue with the Special Discovery Master is five business days. The Special Discovery Master can shorten the response period, where necessary to address emergent issues, or lengthen the response period, upon good cause shown. No reply brief may be filed without permission of the Special Discovery Master.
- The parties are encouraged (but not strictly required) to bring to the Special Discovery Master's attention any dispute arising before September 2, 2022 within ten business days of the issue first being raised by one party to the opposing party. This guideline does not relieve the parties of their obligation to meet and confer regarding all disputes prior to bringing them to the Special Discovery Master's attention.
- The time period for filing objections to a Report & Recommendation filed with the Court by the Special Discovery Master is ten days. Any response to objections must be filed within ten days, and any reply brief must be filed within five days. No sur-reply brief is permitted. These time periods can be shortened or lengthened only by the Court.

- No further extensions of the fact-discovery deadline will be granted absent extraordinary and compelling circumstances.

All of these recommendations are reflected in the proposed Order accompanying this Report & Recommendation.

Respectfully submitted,

/s/ Bruce P. Merenstein
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Dated: June 10, 2022